where the military wasn't singled out, but just ran afoul of a school's nondiscrimination policy.

Ms. Kagan's argument was considered by the U.S. Supreme Court and the U.S. Supreme Court upheld the Solomon amendment. In specifically addressing Ms. Kagan's amicus brief with the Harvard professors, Chief Justice Roberts, writing for the Court, dismissed Ms. Kagan's novel statutory interpretation theory using these words:

That is rather clearly not what Congress had in mind in codifying the DOD policy. We refuse to interpret the Solomon amendment in a way that negates its recent revision, and indeed would render it a largely meaningless exercise.

It is telling also to note that the brief she signed on to was unable to convince a single Justice of the Supreme Court to go along with it—not even Justice Ruth Bader Ginsberg who was once general counsel to the American Civil Liberties Union.

Let me mention one more thing people have mentioned about the Kagan decision to bar the military from recruiting on the Harvard campus. Some may have heard that the decision to bar the military was merely honoring a ruling of the Third Circuit, which briefly ruled against the Solomon amendment on a split decision in Rumsfeld v. FAIR. It is critical to note that the Third Circuit's ruling never went into effect because the case was appealed to the U.S. Supreme Court and the Third Circuit stayed enforcement of its decision. In other words, the Third Circuit said: Yes, we have rendered it. We understand our opinion is under appeal. We are not going to issue a mandate or an injunction that our opinion has to be followed. We will allow this case to be decided ultimately by the Supreme Court of the United States.

No injunction was ever entered against enforcement of the Solomon amendment. Any decision by any dean to reject the Solomon amendment and not enforce it was not required by law. The law stayed in effect. In fact, Dean Kagan acknowledged that in an e-mail to the Harvard Law School community in 2005. There was a lot of controversy about this at Harvard. A lot of people weren't happy about it, you can be sure. She admitted in that e-mail that she had barred the military from campus, even though no injunction was in place, saying:

Although the Supreme Court's action meant that no injunction applied against the Department of Defense, I reinstated the application of our anti-discrimination policy to the military . . . ; as a result, the military did not receive assistance during our spring 2005 recruiting season.

So it is clear that the barring of the military took place while the Solomon amendment was, in effect, the law of the land. Her e-mail indicates she understood that at the time. As a result, students who wanted to consider a military career were not allowed to meet with the recruiters on campus. The military was even forced to threaten Harvard University's Federal funding in order to get the military readmitted to campus as time went on. This was all a big deal. The Congress was talking about it. We had debate on it right here on the floor and in the Judiciary Committee, of which I am a member.

I think a nominee to be the Department of Justice's chief advocate before the Supreme Court, to hold the greatest lawyer job in the world, should have a record of following the law and not flouting it. The nominee should, if anything, be a defender of the U.S. military and not one who condemns them. Ms. Kagan's personal political views, I think, are what led to this criticism of the military, this blocking of the military. She opposed a plain congressional act that was put into place after we went through years of discussion and pleading with some of these universities that were barring the military. They had refused to give in, so we passed a law that said, OK, you don't have to admit the military, but we don't have to give you money, and we are not giving you any if you don't admit them. They didn't like that. So Ms. Kagan's refusal of on-campus military recruiters went against a congressional act. Her actions were an affront to our men and women then in combat and now in combat. The Solicitor General should be a person who is anxious and eager and willing to defend these kinds of statutes and to defend our military's full freedom and right to be admitted to any university, even if some university doesn't agree with the constitutional and lawfully established policies of the Department of Defense.

I would also raise another matter, and I think this is important. If there was some other significant showing, I think, of competence or claim on this position, I would be more willing to consider it. If she were among the most proven practitioners of legal skill before Federal appellate courts or had great experience in these particular positions, maybe I could overcome them. Maybe if she had lots of other cases in her career that could show she had shown wisdom in other areas, but that is not the case. She has zero appellate experience. Dean Kagan has never argued a case before the U.S. Supreme Court, which isn't unusual for most American lawyers, but for somebody who wants to be the Solicitor General whose job it is to argue before the Supreme Court, it is not normal. But for that matter, she has never argued any appellate case before any State supreme court.

In fact, she has never argued a case on appeal before any appellate court, whether Federal, State, local, tribal or military. That is a real lack of experience. When asked about this lack of experience at our hearing, Ms. Kagan tried to compare her record to other nominees saying this:

And I should say, Senator, that I will, by no means, be the first Solicitor General who has not had extensive or, indeed, any Supreme Court argument experience. So I'll just give you a few names:

Robert Bork, Ken Starr, Charles Fried, Wade McCree. None of those people had appeared before the courts prior to becoming solicitor general.

Well, Ms. Kagan's record hardly compares to the names she cited in her own defense.

Regarding Charles Fried, Ms. Kagan was wrong in stating that he never argued to the Supreme Court. Although Professor Fried did not have much in the way of litigation experience before being nominated, he had argued to the Supreme Court while serving as Deputy Solicitor General in Rex Lee's Solicitor General's Office. Accordingly, Mr. Fried had two things Ms. Kagan lacks—Supreme Court experience and experience within the Solicitor General's Office.

Ms. Kagan also compared herself to Ken Starr and Wade McCree, both of whom had a wealth of appellate experience that she lacks. Prior to his nomination to be Solicitor General, Ken Starr served as a U.S. Court of Appeals judge in the District of Columbia—an appellate court—from 1983 to 1989, a court before which the best lawyers in the country appear and argue cases. He had to control and direct their argument, and as a result he got to see and have tremendous experience in that regard as an appellate judge. Wade McCree had even more experience before his nomination. Mr. McCree served as a U.S. Court of Appeals judge in the Sixth Circuit, from 1966 to 1977, 11 years.

Robert Bork also had a strong litigation background before his nomination. He was one of the most recognized, accomplished antitrust lawyers in private practice in the country.

We should not forget the critically important role the Solicitor General plays in our legal system. As Clinton-era Solicitor General Drew Days wrote in the Kentucky Law Journal, ''the Solicitor General has the power to decide whether to defend the constitutionality of the acts of Congress or even to affirmatively challenge them.'' That is quite a power—the power to defend statutes in the Supreme Court, or even challenge them in the Supreme Court.

This is a very critical job within our Government. I think it deserves a more experienced lawyer, one with a record that shows more balance and good judgment. I think Ms. Kagan's lack of experience is an additional reason I am uncomfortable with the nomination. I think nominees have to be careful about expressing opinions on matters that might come before them in the future. But for a nonjudicial position, and concerning issues which were commented on today, Senator SPECTER believes she has been less than forthcoming. Had she been more forthcoming, I might have been a little more comfortable with the nominee. Her failure to be responsive to many questions, I think, causes me further concern.

To paraphrase a well-known statement of then-Senator BIDEN—now our